

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: M. F., Sue and Keith Brents)
 Dist. D02, Block 17X, Parcel A00042) Shelby County
 Residential Property)
 Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$117,100	\$766,000	\$883,100	\$220,775

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on August 21, 2007 in Memphis, Tennessee. In attendance at the hearing were Sue and Keith Brents, the appellants, and Shelby County Property Assessor's representative Elizabeth Triplett.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 5.97 acre tract improved with a 6,756 square foot residence constructed in 2005. Subject property is located at 1290 Oak Lake Circle in Collierville, Tennessee.

The taxpayers contended that subject property should be valued at \$738,652. In support of this position, the taxpayers argued that the current appraisal of subject property does not achieve equalization given the assessor's appraisals of other homes in the area. In addition, the taxpayers introduced several comparable sales they asserted support a reduction in value. In particular, the taxpayers stressed that the home located at 1223 Oak Lake Circle is currently listed for sale at \$444,900 despite having previously sold on August 25, 2004 for \$699,000. Finally, Mr. Brents testified that the taxpayers arrived at their opinion of value by averaging the assessor's "five or six highest appraisals" and a "July 31, 2007 sale."

The assessor contended that subject property should be valued at \$817,300. In support of this position, four comparable sales were introduced into evidence. Ms. Triplett placed primary emphasis on comparable #4 which resulted in an indicated value of \$817,300 for the subject after the indicated adjustments.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$817,300 insofar as the assessor's contention of value established the upper limit of value. As will be discussed below, the administrative judge would have normally affirmed the Shelby County Board of Equalization based upon the presumption of correctness attaching to its decision due to the deficiencies in the taxpayer's proof.

Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981). Respectfully, the administrative judge finds that the taxpayers' proof cannot provide a basis of valuation because it does not comport with Tennessee law or generally accepted appraisal practices.

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the State Board of Equalization has historically adhered to a market value standard when setting values for property tax purposes. See *Appeals of Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982, Final Decision and Order, April 10, 1984). Under this theory, an owner of property is entitled to "equalization" of its demonstrated market value by a ratio which reflects the overall level of appraisal in the jurisdiction for the tax year in controversy.¹ The State Board has repeatedly refused to accept the *appraised* values of purportedly comparable properties as sufficient proof of the *market* value of a property under appeal. For example, in *Stella L. Swope* (Davidson County, Tax Years 1993 and 1994), the Assessment Appeals Commission rejected such an argument reasoning as follows:

The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Final Decision and Order at 2.

With respect to the issue of market value, the administrative judge finds that the taxpayers' analysis must be rejected for at least two reasons. First, January 1, 2006 constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The administrative judge finds that much of the taxpayer's proof concerned events occurring after January 1, 2006 and is therefore irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not

¹ See Tenn. Code Ann. §§ 67-5-1604-1606. Usually, in a year of reappraisal – whose very purpose is to appraise all properties in the taxing jurisdiction at their fair market values – the appraisal ratio is 1.0000 (100%). That is the situation here.

relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events.” Final Decision and Order at 3. Second, the administrative judge finds that none of the taxpayers’ comparables were adjusted to account for differences vis-à-vis subject property. The administrative judge finds that the Assessment Appeals Commission concisely summarized the need to adjust comparable sales in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) as follows:

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

The administrative judge finds the procedure typically utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm’s-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then *adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable*. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.
5. Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.

[Emphasis supplied]

Appraisal Institute, *The Appraisal of Real Estate* at 422 (12th ed. 2001).

The administrative judge finds that even if the appraised values relied on by the taxpayers had been actual sales, generally accepted appraisal practices require that sales be adjusted rather than averaged. When deriving an estimate of value from comparative sales data one textbook cautions that:

In selecting the single value estimate, the assessor must never average the results. Rather, the process requires the assessor to review the adjustments made and place the greatest reliance on the most comparable property. This comparable is the one that requires the fewest adjustments. [Emphasis supplied.]

International Association of Assessing Officers, *Property Assessment Valuation* (2nd ed. 1996), pp. 123-24.

The administrative judge finds that the listing of the home located at 1223 Oak Lake Circle for \$444,900 does not necessarily indicate (1) that the August 25, 2004 sale for \$699,000 was in excess of market value; or (2) reflect a drastic decline in values. The administrative judge finds that a local realtor provided the taxpayers with some of the information contained in exhibit 1. The administrative judge finds that the listing sheet for this property has the handwritten notation "foreclosure." The administrative judge finds that the State Board of Equalization has historically refused to adopt sales out of foreclosure as indicative of market value. See, e.g., *Armed Services Mutual Benefit Assoc.* (Assessment Appeals Commission, Davidson Co., Tax Years 1991 and 1992).

Based upon the foregoing, the administrative judge would normally affirm the current appraised value of \$883,100 based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization. In this case, however, the administrative judge finds that the assessor's contended value of \$817,300 constitutes the upper limit of value.

The administrative judge finds it appropriate to note that the taxpayers did not introduce any evidence concerning their construction costs. Given a January 1, 2006 assessment date, the relative lack of good comparable sales, and completion of construction in late 2005, the cost approach could potentially have significant probative value.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$117,100	\$700,200	\$817,300	\$204,325


It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of September, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Sue & Keith Brents
Tameaka Stanton-Riley, Appeals Manager